

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MACA.No. 832 of 2005(B)

**AGAINST THE AWARD dt. 30.10.04 IN OP(MV).591/2002 of MOTOR ACCIDENT CLAIMS
TRIBUNAL, KALPETTA.**

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APPELLANTS/PETITIONERS:

- 1. SALOMY @ SALY JOHNY, AGED 30 YEARS,
W/O. LATE JOHNY, OTTAPLAKKAL VEEDU,
MANALVAYAL POST, IRULAM VILLAGE, PULPALLY VIA.,
S. BATTERY TALUK.**
- 2. JILNA, AGED 13 YEARS,
D/O. LATE JOHNY (MINOR), DATE OF BIRTH OF
MINOR 10-08-1989.**
- 3. JITHIN, AGED 10 YEARS,
S/O. LATE JOHNY, DATE OF BIRTH OF MINOR 20-06-1992**
- 4. THRESSIA, AGED 70 YEARS,
W/O. DEVASSIA (ALL ARE RESIDING AT ABOVE ADDRESS
P2 AND P3 ARE MINORS REPRESENTED BY THE NEXT
FRIEND AND GUARDING MOTHER 1ST PETITIONER SALOMY @
SALY JOHNY).**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS: RESPONDENTS:

- 1. THALAPPOYIL MOHAMMED, S/O.ABDUL KHADER,
THALAPPOYIL HOUSE, SOUTH KODUVALLY, KODUVALLY POST
KOZHIKODE DISTRICT, PIN-673 572 (DRIVER-CUM-OWNER
OF THE VEHICLE BEARING NO.KL-11 E/3187,
ASHOK LEYLAND LORRY).**
- 2. THE BRANCH MANAGER,
THE NEW INDIA ASSURANCE CO. LTD., SILVER PLASA,
I.G. ROAD, CALICUT-673 004 (INSURER OF THE VEHICLE
BEARING NO.KL-11E/3187 ASHOK LEYLAND LORRY),
POLICY NO.760602/31/02/00566.**

BY ADV. SRI.N.S.MOHAMMED USMAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.No.832 OF 2005

Dated 11th June, 2007

JUDGMENT

Koshy, J.

Husband of the first appellant while working as a cleaner of Lorry bearing registration No.KL-11-E-3056 met with an accident on 19.10.02 and died due to the negligence of the driver of Lorry No.KL-11-E-3187. The widow along with two minor children and mother claimed compensation amounting to Rs.6,00,000/=. The Tribunal found that the accident occurred due to the negligence of the driver-cum-owner of the vehicle KL-11-E-3187 and directed the second respondent insurance company to deposit the compensation awarded. The total compensation awarded was only Rs.2,37,000/=. The only dispute in this appeal is regarding the compensation for loss of dependency awarded by the Tribunal. The deceased was aged only 32. Admittedly, he was employed as Cleaner in a Lorry KL-11-E-3056. The Tribunal has taken only a notional income of Rs.1,500/= per month. The accident occurred on 19.10.02. According to the claimants, the deceased was getting Rs.5,000/= per month. It is contended that even if minimum wages is taken into account, a cleaner is entitled to get more than Rs.4,500/= in the year 2002 and, therefore, Rs.1,500/= taken is inadequate. The deceased was aged 32 and we are of the opinion that at least Rs.2,700/= can be taken as monthly

income and Rs.1,800/= as the monthly loss of dependency. Considering the age of the deceased at the time of the accident, the Tribunal has fixed 17 as the multiplier. The Apex Court in Smt. Supe Dei and others v. M/s.National Insurance Co. Ltd. and another (JT 2002 (Suppl.1) SC 451) and Abati Bezbaruah v. Dy Director General, Geological Survey of India and another ((2003) 3 SCC 148) held that while calculating compensation under section 166 of the Motor Vehicles Act, second schedule provided under Section 163A can be taken as a guideline. Therefore, multiplier taken by the Tribunal needs no enhancement. If that be so, compensation payable will be Rs.1,800 x 12 x 17 = 3,67,200/=. The Tribunal has awarded only Rs.2,04,000/= as compensation for loss of dependency. Therefore, additional compensation payable under this head will be Rs.1,63,200/=. It was contended that compensation awarded under other heads are very meagre. Considering the total compensation awarded, we are not granting any enhancement under other heads. The additional compensation of Rs.1,63,200/= should be deposited by the second respondent insurance company, over and above the amount decreed by the Tribunal, with 7% interest from the date of application till its deposit. On deposit of the amount, Rs.15,000/= can be withdrawn by the fourth appellant, mother of the deceased, and Rs.50,000/=

by the first appellant, wife of the deceased. Balance amount should be deposited in the name of appellants 2 and 3 in a nationalized bank, in equal proportion. The amount due to second appellant daughter can be withdrawn by her at the time of her marriage and the third appellant son can withdraw the amount when he attains majority.

The appeal is partly allowed.

J. B. KOSHY
JUDGE

K. P. BALACHANDRAN
JUDGE

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